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(a) That it is technologically feasible to comply with the State or local requirement. Evidence of technological feasibility could take the form of:

(1) Statements by affected persons indicating ability to comply with the State or local government requirement.

(2) Statements indicating that other jurisdictions have established similar requirements that have been, or could be, met by persons affected by the requirement that is the subject of the application.

(3) Information as to technological product or process modifications necessary to achieve compliance with the State or local requirement.

(4) Any other information indicating the technological feasibility of compliance with the State or local requirement.

(b) That it is economically feasible to comply with the State or local requirement, i.e., that there would not be significant adverse effects on the production and distribution of the regulated products. Evidence of economic feasibility could take the form of:

(1) Information showing that the State or local requirement would not result in the unavailability (or result in a significant decline in the availability) of the product, either in the interstate market or within the geographic boundary of the State or local government imposing the requirement.

(2) Statements from persons likely to be affected by the State or local requirement concerning the anticipated effect of the requirement on the availability or continued marketing of the product.

(3) Any other information indicating the economic impact of compliance with the State or local requirement, such as projections of the anticipated effect of the State or local requirement on the sales and prices of the product, both in interstate commerce and within the geographic area of the State or local government.

(c) The present geographic distribution of the product to which the State or local requirement would apply, and projections of future geographic distribution. Evidence of the geographic distribution could take the form of governmental or private information

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or data (including statements from manufacturers, distributors, or retailers of the product) showing advertising in the interstate market, interstate retailing, or interstate distribution.

(d) The probability of other States or local governments applying for an exemption for a similar requirement. Evidence of the probability that other States or local governments would apply for an exemption could take the form of statements from other States or local governments indicating their intentions.

(e) That specified local conditions require the State or local government to apply with the exemption in order to adequately protect the public health or safety of the State or local area.

§ 1061.10 Information on affected parties.

An application for an exemption from preemption shall include a statement which identifies in general terms, parties potentially affected by the State or local requirement, especially small businesses, including manufacturers, distributors, retailers, consumers, and consumer groups.

§ 1061.11 Incomplete or insufficient applications.

(a) If an application fails to meet the threshold requirements of § 1061.4(a) of this part, the Office of General Counsel will inform the applicant and return the application without prejudice to its being resubmitted.

(b) If an application fails to provide all the information specified in §§ 1061.5 through 1061.10 of this part, and fails to fully explain why it has not been provided, the Office of General Counsel will either:

(1) Return it to the applicant without prejudice to its being resubmitted,

(2) Notify the applicant and allow it to provide the missing information, or

(3) If the deficiencies are minor and the applicant concurs, forward it to the Commission for consideration on its merits.

(c) If the Commission or the Commission staff believes that additional information is necessary or useful for a proper evaluation of the application, the Commission or Commission staff

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will promptly request the applicant to furnish such additional information.

(d) If an application is not returned under paragraphs (a) or (b) of this section, the Commission will consider it on its merits.

§ 1061.12 Commission consideration on merits.

(a) If the Commission proposes to grant an application for exemption it will, in accordance with 5 U.S.C. 553, publish a notice of that fact in the FEDERAL REGISTER, including a proposed exemption regulation, and provide an opportunity for written and oral comments on the proposed exemption by any interested party.

(b) The Commission will evaluate all timely written and oral submissions received from interested parties, as well as any other available and relevant information on the proposal.

(c) The Commission's evaluation will focus on:

(1) Whether the State or local requirement provides a significantly higher degree of protection than the

Commission statute or regulation from the risk of injury or illness that they both address.

(2) Whether the State or local requirement would unduly burden interstate commerce if the grant of the exemption from preemption allows it to go into effect. The Commission will evaluate these factors in accordance with the Commission's statutory preemption provisions and their legislative history.

(3) Whether compliance with the State or local requirements would not cause the product to be in violation of the applicable Commission statute, standard, or regulation.

(d) If, after evaluating the record, the Commission determines to grant an exemption, it will publish a final exemption regulation, including the findings required by the statutory preemption provisions, in the FEDERAL REGISTER.

(e) If the Commission denies an application, whether or not published for comment, it will publish its reasons for doing so in the FEDERAL REGISTER.